1940

[redacted]tment of Land Court

OFFICE Boston

STATION Mass

No. 2781

Dated 8.X.40

Today

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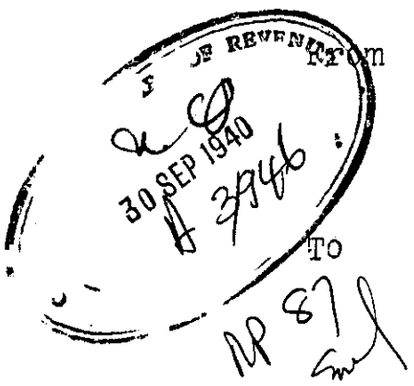
DISPATCHED
OCT 1940

(SUBJECT.)

Sents-t Patten Dtts cmnt.
O.S Dd. 235.40 S. Mariano
Permn to remain Upr. Ner
Rer Rivers — Rubber Relcas.
& attached memoranda.
Dekeme Dated

Ref.A3-4851-40. South Kanara Collector's Office,
Camp Karkal, dated 27 - 9 - 1940.



From

M. V. Subrahmanyan Esq., M.A.,I.C.S.,
Collector of South Kanara.

To

The Secretary to the Board,
Land Revenue and Irrigation,
Madras.

Sir,

Suits - Puttur Dt. Munsif's court - O.S.No. 238/40 - Puttur Taluk - Balnad village - Land Revenue arrears -release of attached movables to a wrongperson suit -defence -report submitted.

For the recovery of land revenue arrears of Rs. 31-5-0 due in respect of holding No.44 of Balnad village, Puttur Taluk for fasli 1348, the potail of Balnad village distrained from the plaintiff's house on 7-10-39, 2 pairs of ploughing oxen, 6 muras of paddy and 625 sheaves of hay. The paddy and hay had been distrained by the potail on 5-10-39 when it was standing in the field and was subsequently collected and included in the No.2 dated 7-10-39. The default holding stands registered in the name of the plaintiff. At the time of the distraint, the plaintiff was in remand in the Puttur Sub Jail in connection with a criminal case. On 25-10-39 the plaintiff's nephew Jathappa Rai paid the arrears of land revenue on behalf of the plaintiff, and on 24-10-39 and 22-11-39 claimed the release of the moveables distrained. The Tahsildar of Puttur in his endorsement R.R. 51-49 dated 27-10-39 directed the Potail of Balnad to deliver the movables to the person

from whom they had been seized. But, the potail released the moveables to the plaintiff's nephew on 7-12-39 on the ground that he was the person from whom the moveables had been seized. During the enquiry into the petition dated 23-10-39 filed by Jathappa Rai, the plaintiff was examined through the Sub Jail Superintendent, Puttur. In his statement dated 24-10-39 so recorded the Plaintiff stated that he would be released on bail on that day and that the moveables might be returned to him.. On 4-12-39 i.e., 3 days prior to the release of the movables to the plaintiff's nephew, the plaintiff petitioned to the Tahsildar alleging that inspite of the Tahsildar's order to the potail to release the property to him the latter failed to release it to him and requested the Tahsildar to direct the potail to expedite the release. This petition was forwarded on 9-12-39 to the potail who reported on 20-12-39 that he had already released the movables to the plaintiff's nephew. In the subsequent enquiry held by the Revenue Inspector it was proved that the property distrained belonged to the plaintiff and that it was wrongly delivered to the plaintiff's nephew. The Tahsildar, However rejected the petition in his L.Dis. 968-40 dated 25-2-40 on the ground that the plaintiff should have nominated an agent to receive the property when he was questioned about it in the Sub Jail and that as he failed to do so, the movables were released to the plaintiff's nephew who is the legal heir.

p 11 (F) p 13 (F) p 24 (L) p 1 (L) p 15 (L)

2. The plaintiff subsequently sent a suit notice dated 26-3-40 which was received in this office on 28-3-40. This was disposed of in this office Proceedings D.Dis. 2199-40 dated 30-6-40. The distraint records clearly show that the property had been attached as the plaintiff's property. Besides, the petition dated

p 1-2 (D) p 15-17 (D)

24-10-39 of the plaintiff's nephew to the Tahsildar indicates that he purported to act only on behalf of the plaintiff and that he wanted the property only on the plaintiff's behalf as the latter was in jail at the time of that application. But as the plaintiff was released on bail on 24-10-39 there was no need to return the property on behalf of the plaintiff. In the circumstances of the case, the Tahsildar should have passed a clear order directing the return of the property to the plaintiff. As the Tahsildar's orders referred to above were not correct, I cancelled them and directed that the property should be seized from the plaintiff's nephew and returned to the plaintiff.

3. On 9-7-40 the plaintiff filed a suit before the Dt. Munsif, Puttur. On receipt of the notice of the suit the Tahsildar was asked to report the action taken by him with reference to the directions issued in my Proceedings D.Dis. 2199-40 dated 30-6-40. But the Tahsildar was not able to have the property seized from the plaintiff's nephew as it was not found in his possession. I consulted the Government Pleader, Mangalore, in the matter of the defence of the suit and he has sent a written statement to be filed on behalf of Government. In the statement, prepared by him he has avoided all reference to my order D.Dis. 2199-40 setting aside the sale. He says that the dismissal of the suit could be secured only by defending the action of the Tahsildar in court, however hasty or illadvised it might have been and that my order dated 30-6-40 upholds the plaintiff's contention as it states that the Tahsildar's release of the distrained articles was unjustified and that the only proper course was to return them to the notice giver. But I consider that the more proper course would be to add a paragraph indicated below to the written statement and take the

plea that the Government is not estopped.

"This defendant admits the receipt of the suit notice mentioned in the plaint and submits that orders were passed by this defendant directing the return of the properties to the plaintiff as it was considered that since the plaintiff had returned from jail by the time the properties had to be returned the more proper course would have been to return them to him and not to his nephew on his behalf but these orders could not be given effect to as the properties were not found in the custody of the nephew the above-said Jathappa Rai. In view of this and the fact that the officers had passed the previous orders on what they considered to be the correct view and the fact that the view they took and the orders they passed were also proper as Jathappa Rai was purporting to act all along on behalf of the plaintiff, this defendant submits that the Government should not be made liable and that the proper person to be sued is the plaintiff's own nephew the above-said Jathappa Rai".

4. The suit stands posted to 15-10-40 for filing the written statement.

5. This office file D.Dis. 2199-40 Taluk files D.Dis. 968-40 and P.R.51-49 a copy of the plaint and the draft written statement prepared by Government Pleader are enclosed.

For Collector.

28.9.40

IN THE COURT OF THE DISTRICT MUNSIF OF PUTTUR.
(SOUTH KANARA).

Original Suit No. 238/40.

Between:-

Appaya alias Chikkappa Rai, nephew of Madana Bunta, residing at Balnad ---- village, Puttur Taluk, South Kanara. ... Plaintiff.

And

Province of Madras represented by the District Collector of South -- Kanara, Mangalore. ... ... Defendant.

****

The address of the plaintiff for the service of all ----- notices and processes is as shown above:-

Plaint presented under Section 26 C.P.C

Most respectfully sheweth:-

1. That the plaintiff is the owner and registered holder of the properties covered by Patta No. 44 of Balnad village, Puttur Taluk and for arrears of assessment due to the defendant for --- the fasli 1348, the yenel crops raised by the plaintiff last -- year in about 5 kalsiges of bail fields known as Kuddathimar --- were distrained and got hargested also by the village potail --- on behalf of the defendant in Ref.III P.R.176/48 on the file of the Tahsildar of Puttur and at least 36 muras of paddy and 2000 sheaves of hay must have been realised out of the same, though the potail has under estimated the same with a view to cause --- loss to the plaintiff.

Further in connection with the same two pairs of bullocks shown in A Schedule below also belonging to the plaintiff and -- which could be valued at least ar Rs. 76-0-0 were also distrained by the village potail.

2. Consequent on the payment of the assessment due to the -- defendant the harvested paddy and hay and the distrained bullocks also ought to have been released and delivered over to the plaintiff. But the village potail has under orders of the Tahsildar - delivered over the same to one Jathappa Rai contrary to the ---- directions of the plaintiff, which has caused wrongful loss to

the plaintiff.

3. The plaintiff moved the Tahsildar of Puttur by means of a petition for redress but the latter was only pleased to justify the action taken by him. A suit notice sent to the defendant in the matter has yielded so far no better result. Hence this --- suit for the necessary reliefs.

4. The suit notice required under Section 80 C.P.C. was ---- served on the defendant on 28-3-1940 and a copy of the same with his acknowledgment have been filed herewith.

5. The cause of action for this suit arose on 7-12-1939 when the distrained movables were delivered over to another and subsequently also when the Tahsildar of Puttur refused to move in the matter at Balnad village, Puttur Taluk, within the jurisdiction of this Court.

6. The value of the relief sought in this suit is Rs.137-8-0 and a court fee of Rs.15-11-0 is paid under Section VII, Clause I Schedule I, Article I Court Fees Act.

7. The plaintiff, therefore, prays for a decree and judgment directing the defendant to pay the plaintiff-

(a)	Price of 36 muras of paddy valued at Rs.54/- and 2000 sheaves of hay at Rs.6-0-0 making in all	Rs. 60-0-0.
(b)	Price of four heads of bullocks set out in the A Schedule below	76-0-0.
(c)	Costs of registered notice	1-8-0
	Total.	137-8-0.

(d) The said sums, costs of this suit and future interest-

(e) and such other or further reliefs as the Court deems fit to grant in favour of the plaintiff.

SCHEDULE.

ಬಾಚಕೆಸ್ತಗಿನ ಅಗಲ ಬ್ಯಾಕಗಾಲು ಕಾಂ, ಕುಂಡದಲ್ಲಿ ಮುಂಗುವಿಂಬಳ ಕಾಂ, ಮುಂಗಲು ಎಕ್ಕ ನಡುವಿನ 2 ಡಲ್ಲಿ ಮೈಲ್ಲುನವಿದು ಡಿಸ್ತಿದ ಬಲಗಿ ಕೊಡಿ ಕೊಂಡು ಹೊಗಬಹುದು!, ಇದ್ದ ಜಿಲ್ಲೆ ಸಂಗತಿ ಕಿಂಗ ಮಾಸ್ತಿಯಂಬು ಗಾ ಡೊರ ಮೈಸ್ತರ ಅಗಲ ಕೊಂಬು ಬಹುದು! ಸಂಗತಿಯಾಸ್ತಿದ ಅಗಲ ಕೊಂಬುನ ಡೊರ ಮೈಸ್ತರ ಬಹುದು! ಸಂಗತಿ ಕೊಂಡ ಬೆಂಗಲ ಮಾಸ್ತಿಯಂಗತಿ ಬಲುಗಂದ ಬಲಗಿ ಕೊಡಿ ಕೊಂಡು ಹೊಗಬಹುದು ಮುಂಗುವಿಂಬಳ ಕಾಲ್ಲಿ ಕಾಲು ಬಿಂಬಳ ಬಹುದು! ಸಾಕ್ಷಿ ಬಹುದು. ಅಂಗಲ ನಾಲ್ಕು.

Puttur, 6-7-1940. Original plaint is verified and signed by the plaintiff and his Vakil Sri M.Sadashiva Rao also.

True Copy)

For Collector.

Sd/- M. Sadashiva Rao,
Pleader for plaintiff.

IN THE COURT OF THE DISTRICT MUNSIF OF PUTTUR.

O.S.No. 238 of 1940.

Between.-

Appaya alias Chickappa Rai ... ... Plaintiff.

and

The Province of Madras. ... ... Defendant.

Written statement of the defendant under Order VIII, Rule 1 of Civil Procedure Code.

The defendant abovenamed begs to state as follows:-

1. The defendant is the province of Madras and [illegible] address for service is as stated in the plaint.

2. This defendant admits that the plaintiff is the registered holder of the properties comprised in holding No. 44 of Balnad village, Puttur Taluk.

3. This defendant also admits that for the recovery of land revenue arrears due in respect of the plaintiff's holding No. 44 for fasli 1348, the properties described in plaint para 1 - were attached by the subordinates of this defendant on 5-10-39 and 7-10-1939; but it is denied that 36 muras of paddy and -- 2000 sheaves of hay were realised from the distrained crop. - Two pairs of oxen and not bullocks were attached.

4. The plaintiff's averments about the attachment and ---- release of the movables are only partially true and wholly --- misleading. At the time of attachment, the plaintiff was --- absent from his properties, being in remand in the Sub Jail at Puttur; his nephew Jathappa Rai, a member of his undivided -- tarwad living along with him in the same house was in possessic and management of the properties. The plaint mentioned ----- movables were distrained from Jathappa Rai's possession, and - should have been sold in due course in public auction; but -- the arrears of revenue were paid by the said Jathappa Rai and the attached articles were delivered to him. The plaintiff - did not pay up the arrears of revenue, nor did he avail himself of the means to obtain release of the distrained articles by - paying up such arrears.

5. This defendant submits that the plaintiff cannot approbate and reprobate at the same time, the acts of his nephew Jathappa Rai the defacto manager and agent of his family properties. The --- plaintiff who claims entitled to the benefit of the payment of -- arrears of revenue by Jathappa Rai cannot repudiate the release of the distrained articles in Jathappa Rai's favour.

6. The release of the distrained movables to Jathappa Rai --- was made bonafide, and with due regard to the legal and equitable claims as between the plaintiff and Jathappa Rai. In any event Jathappa Rai is a necessary party to this suit.

7. The plaintiff has no cause of action against this defendant. The suit as against this defendant has been misconceived.

8. The suit is barred by limitation having been instituted -- more than six months subsequent to the date of the alleged ----- cause of action viz., 9-12-1939.

9. This defendant further submits that on plaintiff's averments his cause of action, if any, arose on 23-10-1939, when the arrears of revenue due from him were paid up and he became entitled in law to the delivery of the distrained movables.

10. The value of the distrained articles as claimed in the --- plaint is excessive. At the utmost it could be only Rs.33/-, -- Rs. 6-12-0 for paddy and hay, and Rs. 26-4-0 for the oxen.

Prays, therefore that the suit may be dismissed with --- costs.

South Kanara Collector's Office,
Mangalore, 27th September 1940.

For Collector.

28.9.40

dg 15.7.40

F.W.S

Suits - Puttur D.M's Court. O.S. No 238. 40 (S. Kanara) - Puttur 2K - Balnadrage - Land Revenue arrears. Release of attached movables - Defence Sanc'd

A 3946-40 9

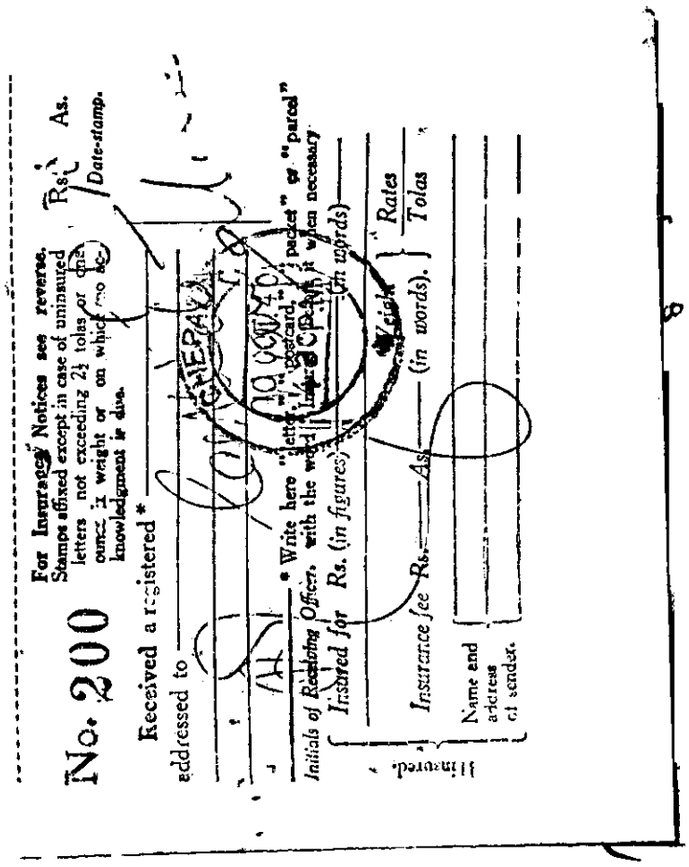
Res (Mis) 2781 8/10/40

The Board Sanction the defence of the Suit and approves the draft written Statement as prepared by the Govt Pleader without the addition suggested by the Collector)

18/8/x

ALN 8/10

8/10.


No. 200
For Insurance. Notices see reverse. Stamps affixed except in case of uninsured letters not exceeding 2½ tolas or one ounce in weight or on which no acknowledgment is due.
Rs. As.
Date-stamp.
Received a registered *
addressed to
* Write here "letter," "postcard," "packet" or "parcel" as the case may be.
Initials of Receiving Officer, with the word "Insured" when necessary
Insured for Rs. (in figures)
(in words)
Insurance fee Rs. As. (in words).
Value
Rates
Tolas
Name and address of sender.
Uninsured.

To the Govt of Kanara with records noted as per list

(vide list indicated in para 5 - pencil)

KG 8/10/40

(Sd) Illegible 8/10/40

Hearing 15-10-40

Note File

M.
A(LR)

Suits - Puttur, D.M's Court - O S No 238-40 (S. Kanara) - Puttur Taluk Balnad Vge - Land revenue arrears - Release of attached movables - Defaulter

P.1-4 C.F. { A 3946-40 from the Collector of S. Kanara
A 3. 4851-40 of 27. 9.40

To A S.(L.R)

For the realisation of the arrears of land revenue amounting to Rs 31.5.0 due in respect of Holding no 44 of Balnad Village, Puttur Taluk for Fasli 1348, the potail of Balnad Vge distrained from the plaintiff's house on 7-10-39, 2 pairs of ploughing Oxen 6 muras of paddy, and 625 bhars of hay. The paddy and hay had been distrained on 5.10.39 when it was standing in the field and was subsequently collected and included in the No 2 notice of 7.10.39. The default holding stands registered in the name of the plaintiff. At the time of the distraint the plaintiff was in remand in the Puttur Sub-jail in connection with a criminal case and the movables for

P1 Cf

were produced
distraint/ by the plaintiff's nephew -
Jatiappa R___ a member of the undivided
tarwad. He paid the arrears on 23.10.39 p1 of
and by petitions of 24.10.39 and 27.11.39 p11 of (F) & 15 of (F)
claimed the release of the movables.
The Tahsildar in his Endt no P.R.51.49 of 27/11/39 12 of (F)
directed the potail to deliver the movables
to the person from whom they were seized.
They were finally released on 7-12-39 p17 of (F)

2 On the petition presented
by the plaintiff's nephew on 24.10.39 p11 of (F)
for the release of the movables, the
plaintiff who was in the Sub-jail was
enquired into and he stated that p12 of (F)
he would be released on that day and
that the movables might be returned to
him. The plaintiff again on 4.12.39 sent a petition
to the Tahsr i.e. 3 days before the release of the
movables to the nephew, to expedite the
release of the movables to him. This was
forwarded to the Potail on 9.12.39, who p1 of (L)
reported on 20.12.39 that he has already p4 of (L)
released the property on 7.12.39 to the
nephew. On 26.3.40 the plaintiff sent a p1-2 of (D)
suit notice to the Collector, who took a
different view of the case and directed the Tahsildar
on 30.6.40 to seize the movables from the p15-17 of (D)

nephew and ~~+~~ have them over to the plaintiff. ~~—~~ This could not be done as the ~~f~~ movables were not found in the possession of the nephew

para 3, p 3 of

p 3 of

3 On 9.7.40 the plaintiff filed a suit The G.P, Mangalore has prepared a ~~my~~ written statement. ~~and It is in order It has been scrutinised~~ by the Office and is in order. The Board may sanction the defence of the suit and approve the draft ~~written statement~~

p 7-8 of

~~p 7-8 of~~ para 3, p 3 of

~~4~~ 4 In this written statement ~~prepared by the GP~~, no reference has been made to the Collector's orders of 30.6.40 on the ground that the dismissal of the suit could be secured only by defending the action of the Tahsildar in court however hasty and ill-advised it might have been.

p 15-17 of (D)

p 15-17 of (D)

~~and that the Collectors order upholds~~ the plaintiffs contention in as much as it states that the release of the distrained properties by the Tahsildar was unjustified and that the only proper course was to return them to the ~~plaintiff~~. The Collector however considers

para 3, p 3 of (concluding)

that this order of 30.6.40 should be referred to in the written statement by the addition of a para and a plea taken that the Govt is not thereby estopped. The Collector's order virtually admits the plaintiff's contentions as stated by the A.P and it is not desirable to refer to this in the written Statement. Further, no reference has been made to the Collector's order of 30-6-40 in the plaint and it is unnecessary to refer to it in the written statement. ~~The Collector may be informed~~. If as suggested by the Collector it is to be referred to in the written statement, it is ~~just~~ likely that a call to produce it will come and the Govt may be placed in a rather embarrassing position. It seems that the safer course is to follow the A.P's advice and approve the draft written statement as it is (without the addition suggested by the Collector) and sanction the defence of the suit.

For orders

Movables seized from the defendants nephew were

¶ 15-17 of D

¶ 7-8 of

¶ 7-8 of

para 9, ¶ 3 of

B

EKB 7/10/40

KY 8/X/

returned to heir on 7.12.39 although on 24.x.39 the defendant, who was in prison & was expecting release, had asked for return to heir & not to his nephew. Before 7.12.39 the defendant had been released from jail & was asking for return of the property to heir. The property was returned literally to the person from whom it had been seized as it was agreed & not to the principal who was objecting to it.

The defence is that the defendant committed offence & repented at the same time. He seeks the benefit of payment by his nephew on his behalf & shows that the Govt. for restoring the property bona fide to the person from whom it had been seized

B & A may be observed. The principle enunciated by the Court for civil law need not be added but may be

used by the P.S. in the course
of arguments

8.X.40

Sent for typing

P 2

The Clerk's order was in pursuance
to there is no point in pursuing it
in the circumstances

8-

J.O.A.S.(L.R)

Draft Submitted

8/x

C.F. 32.

Department

From (Name) M.Karamatullah, Esq., I.C.S.,

Designation Collector of South Kanara

Station Mangalore.

Received Registered

To

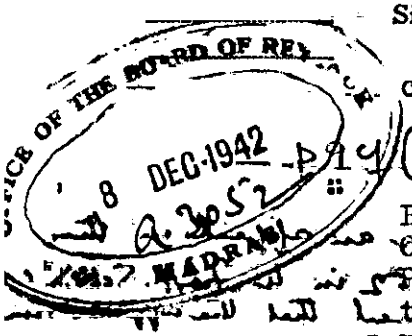
The Secretary to the Board of Revenue, Land Revenue and Irrigation Sale...

Enclosures:

Ref. C. No. A3-6068-42 dated 2-12-42. 194

Sir,

Suits - Puttur Dt.Munsif's court -O.S.No.238/40 - copies of judgment and decree -submitted.



In its resolution Ms. 2781 dated 8-10-40 the Board of Revenue sanctioned the defence of the suit in O.S.No.238/40 on the file of the Dt.Munsif's court, Puttur, relating to the release of the moveables attached for the arrears of land revenue due on Holding No.44 of Balnad village of Puttur Taluk for fasli 1348. The court dismissed the suit on 4-8-42 with a fixed cost of Rs.5-0-0 to the defendant Government. Copies of the judgment and decree are enclosed.

2. The total costs of the suit incurred by the Government in this case amount to Rs.10-12-0 while the court has allowed only a fixed cost of Rs.5-0-0 in favour of Government. The Pleader for Government, Puttur, states that full costs were not awarded to Government on the grounds that the suit was decided on the preliminary issue that Government are not liable for the acts of their servants acting under statutory powers and that the court did not decide as to the ownership of the distrained moveables after examining witnesses on either side. The Pleader for Government further states that according to section 35 C.P.C. grant of court costs is entirely at the discretion of the court and that it is not worthwhile to file an appeal against the decree of the lower court so far as the court costs disallowed are concerned. I agree with the Pleader for Government and recommend to the Board that no appeal is necessary in the case.

4.XII.42

For Collector.

(F.W.S)

Suits. (S. Kanara) – Dt. Munsiff's Court Puttur – O.S 238/40.

Result – Report – Appeal – ~~not necessary~~

Read: From the Collr. S. Kanara letter C. A3. 6068/42 & 2.12.42

d. Dis. 23052/42 & 17-12-42

~~Rec'd (Nil)~~

17/12

~~In the circumstances reported by the Collector,~~

~~the Board agrees with him that no appeal for costs against~~

~~the judge decree of the Dt Munsiff Puttur is necessary.~~

Recorded

The ~~appeal~~ period of limitation for an appeal in this case is 1 month 2 V. der Act 152 in the 2nd Schedule to the Act IX of 1908. It is evident that the appeal time expired as the judgment was pronounced on 4 & the Collr. should have reported in the matter & obtained orders before the expiry of the appeal time

RG. 6/12

To the Collr. S. Kanara

file 9/12

ON

The judgment & decree of the Dt. Munsiff Puttur may be perused. There is no indication ~~anywhere~~ that the discretionary powers vested in the Dt. Munsiff under § 35 C.P.C have been not been properly used. The local G.P and the Collr. are not in favour of appeal. ~~The appeal time also has expired~~ ~~The draft Board order agrees with them & order according~~ ~~The draft above may be approved.~~

The appeal time is 1 month. The Collr. should have reported earlier, even if it be that this is a case in which no appeal need be filed. There is nothing for it now but to record his report. The Collr. should also be informed that he should have obtained orders in the matter before the appeal time expired. The draft above may be approved.

The papers will be stitched with (L) after the issue of the draft

pp 3-9 cf

21/12

p 18 Bic 19

A + B p 1 cf

Y Article 152 p 380 read with Bic 9 N outlook

12/12

May be approved

RG 16/12

file 15/12

M.I. 16/12

In the Court of the Dt. Munsif of Puttur, South Kanara.

Present: Sri D.R. Venkatesa Iyer B.A., M.L.
Tuesday the Fourth day of August 1942.
Original suit No. 238 of 1940.

Appayya alias Chikkappa Rai ... Plaintiff
against,
The Province of Madras, represented) Defendant.
by the Collector of South Kanara.)

This suit coming on for final hearing on Monday, the 3rd day of August 1942 on the preliminary issues II and V before me in the presence of Sri M. Sadashiva Rao, Vakil for the Plaintiff and of Sri B. Achyutha Baliga, Vakil for the defendant and having stood over to this day for consideration, the court delivered the following Judgment:

Plaintiff sues the Province of Madras represented by the District Collector of South Kanara for price of paddy, hay and four heads of bullocks all of which were distrained by the village patel for arrears of land revenue due by the plaintiff but which have not been restored to the possession of the plaintiff notwithstanding his payment of the land revenue after the distraint.

2. The defendant which is the Province of Madras besides pleading that its subordinates have not committed the civil wrongs alleged by the plaintiff contends that there is no cause of action against the Government.

The following issues were raised:

I. Were the attached properties given back to Jathappa Rai?

II. If so, is defendant liable to account to the plaintiff?

III. Is the suit within time?

IV. What is the value of the attached property?

V. Is the defendant not liable for the acts of his servants as claimed in para 7 of the written statement?

4. The suit was posted for trial from time to time and at one stage the point of limitation which the Government have taken was pressed for consideration as also the question of non-liability of the Government for acts of the patel and of the Tahsildar. Decision was deferred on account of the absence of certain records which would throw light on the question of limitation. Both sides have now agreed the question of non-liability in any case of the defendant even assuming that the facts alleged in the plaint are correct. In view of the very recent decision in Maharani Gurucharan Kaur of Nabha V. Province of Madras (1942-II M.L.J.14) I have thought fit to decide this case with reference to the preliminary point.

5. Issues II and V. It will be assumed for the purpose of this suit that the village potel under orders of the Tahsildar failed to deliver over the distrained moveables i.e. the paddy hay and bullocks of the plaintiff to him but gave them over to a wrong person named Jathappa Rai as stated in para 2 of the plaint. It is therefore the civil wrong of omission to restore the property to the plaintiff and of delivery over to a wrongful person that has given rise to this suit. It is clear that the patel and the Tahsildar took possession of the moveables while acting as servants of the defendant and for the purposes of recovering the revenue that was due by the plaintiff. In so doing they were exercising the right vested in them under section 5 of the Madras Revenue Recovery Act II of 1864 That says "whenever revenue may be in arrears it shall be lawful for the Collector or other officer

empowered by the Collector of in that behalf, to proceed to recover the arrear, together with interest and costs of process, by the sale of the defaulter's movable and immovable property." Section 10 entitles the defaulter to tender payment of the arrear after distraint but prior to sale and in that case the rule is the "distrainer"..... shall forthwith release the property. The Plaintiffs case is that the distraining officers violated the latter requirement and acted contrary to his own request in handing the movables over to Jathappa Rai.

6. It is plain and clear that the acts of the servants of the defendant were in the course of the exercise of ---- statutory authority under the Revenue Recovery Act. There is no plea that the servants were actuated by any malice or that the Government itself had issued any executive order in the matter of this distraint or re-delivery of the distrained movables. The facts do not seem to differ from those that arose for consideration in Shivabhajan Vs. Secretary of State for India (28 Bombay 314). In that case it was found that a Chief Constable who was under statute entitled to attach hay did so, but on account of the negligence of the patel to whom they were handed over for custody they could not be given over back to the plaintiff. It was held that the Secretary of State for India could not be held liable for damages to the Plaintiff. In the latest case referred to above, the Shivabhajan V. Secretary of State for India in Council V. Garapati Somayya (51 M.L.J.446) along with others have been referred to and it is stated that the position reiterated would be as follows:- "These authorities clearly establish that the Government could not be made liable if the Act was done or purported to be done by the defendants in discharge of their duty imposed upon them by Statute". In Secretary of State for India in Council V. Garapati Somayya (51 M.L.J.446) the question was also considered from the point of view as to whether the Government is benefitting by the alleged acts of its servants. In no sense can it be said that the Government was benefitting by the failure of its servants to return the distrained movables to the defaulter. The position probably would have been different if the distrained goods had been sold and the proceeds of sale had been credited to Government and if the plaintiffs case was that the distraint and sale were both illegal. The suit is not for recovery of damages for distraint or for disposal of the distrained goods for the benefit of the Government, but it is clearly one that arises out of a wrongful disposal which is contrary to the statute by the servants who are to carry out the statutory duties.

7. Mr. Sadashiva Rao for the plaintiff argued that his is a case of subsequent ratification of its servants' tortuous acts by the Government and that therefore the exceptional case where the Government should be held liable as referred to in the Maharani Gurucharan Kaur of Nabha V. Province of Madras (1942-II M.L.J.14) is the suit one. In support of his contention he stressed the fact of absence of a reply on the part of the Government to his notice under Section 80 of the Civil Procedure Code and to the present written statement of the defendant where they seek to justify the acts of the patel. This contention is unsound because ratification on the part of the Government could only be by either Government passing an order approving of the tortuous act of the servant or by taking benefit of that tortuous act. Mere silence to a suit notice nor alternative pleas of justification and non-liability in the written statement constitute ratification by the Government. I, therefore, hold that even assuming all the allegations in the plaint are correct, the suit against the Province of Madras is misconceived and must be dismissed.

8. The suit is, therefore, dismissed. Fixed costs Rs.5.0.0 to defendant.

Dictated to the shorthand writer, the transcript revised by me and pronounced in open Court, this 4th day of August 1942.

Sd/- D.R.Venkatesa Iyer,
District Munsif.

(True Copy on 8 sheets including 1 to try)

Sd/- xx xx xx xx
Examiner.

/True Copy/

For Collector.

IN THE COURT OF THE DISTRICT MUNSIFF OF PUTTUR,
SOUTH KANARA.

Present:- Sri D. R. Venkatesa Iyer, B.A.,M.L.

Tuesday, the 4th day of August 1942.

Original Suit No.238/40.

Between: Appaya alias Chickappa Rai, nephew of Madana Banta, residing in Balnad Village, Puttur Taluk, South Kanara. — Plaintiff.

The address for service of all processes and notices on the plaintiff is as stated above.

and

The Province of Madras - represented by the Collector of S.Kanara, Mangalore. — Defendant.

Suit for a sum of Rs 137-8-9 made up of (1) Rs 60/- being the value of 36 muras of paddy and 2000 sheaves of hay, and (ii) Rs 76/- being the price of four heads of bullocks - all got attached by -- the defendant for arrears of land revenue in respect of patta No. 44 of Balnad Village for Fasli 1348 and not restored to the possession of the plaintiff notwithstanding his payment of the land --- revenue after distraint, and (iii) Rs 1-8-9 costs of registered --- notice.

The relief claimed is valued at Rs 137-8-9.

The cause of action for the suit is stated to have arisen --- since 7-12-1939, when the distraint moveables were delivered over to another, and since 25-2-1940, when the Tahsildar of Puttur refused to move in the matter, in Balnad Village, Puttur Taluk, --- within the jurisdiction of this court. The plaint was presented on 9-7-1940.

Decree: This suit coming on Monday, the 3rd day of August 1942 for final disposal before me in the presence of Sri M. Sadashiva Rao, vakil for the plaintiff and of Sri B.Achuta Baliga, vakil for the defendant, this court doth order and decree -

1. That this suit be, and the same hereby is dismissed and

2. That the plaintiff do pay to the defendant a fixed cost of Rs 5/-.

Description of the cattle as given in the plaint:

ಬಾಚಕೆಲ್ಯಡಿನ ಅಡಲು ಬ್ಯಾಕಣಿಲ ಕಾಡಿವ ಬಂಡಡಲ್ಲಿ ಮುಂಗಲ್ಲ ಬಿಳುಪಕಾರಿ ಮುಂಡಲ ಎಕ್ಕ, ನಡುವಿನ ಎರಡು ಹುಲ್ಲ ಪಲ್ಲ ಪವೆದ ಮೈಗಿದ ಬಲಗಿವಿ ಕುಂಡಿ ಕುಂಡುವಣಿದ ಎಕ್ಕ / ಇದರ ಬಲ್ಲಿ ಪೆಂಗಿಪಿಡಿ ಕೆಸಿದ ಬೆಳ್ಳಿಯಲ್ಲಾ ನೆಂದ ಮೈಕ್ಕ ಅಡಲ ಕೆಂಬಿನ ಎಕ್ಕ / ಪಲಿಕೆಯಣ ಅಡಲ ಕೆಂಬಿನ ನಿಂದ ಮೈಕ್ಕ ಎಕ್ಕ / ಪಂಗಿ ಕೆಸಿದ ಬೆಳ್ಳಿಯಲ್ಲಾನಿಕ ಬಲನಿಂದ ಬಲಗಿವಿ ಕುಂಡಿ ಕುಂಡು ಮಾಡಿದ ಮುಪ್ಪುಡಿವಳ್ಳಿ ಕಪ್ಪು ಮುಖವಿರುವ ಹಸುವು ಎಕ್ಕ / ಕಾಡಾ ಎಕ್ಕ ಗಳ್ಳು ಪಾಲು /

Costs of suit.

Plaintiff's.	Amount.	Defendant's.	Amount.
1. Stamp for plaint;	Rs 15-11- 0.	1. Stamp for petition;	Rs 0-12- 0
2. ,, for vakalat.	1- 0- 0.	2. ,, vakalat.	...
3. ,, for exhibits.	..	3. ,, exhibits:	...
4. ,, for petitions.	1- 8- 0.	4. Translation fee.	...
5. Translation fee.	..	5 Service process .	...
6. Service of process.	1- 0- 0.	6. Subsistence for witnesses attendance. ..	...
7. Subsistence for witnesses attendance.	1- 0- 0.	7. Commissioner's fee. ..	....
8. Commissioner's fee.	...	8. Pleader's fee on Rs 137/-. ..	10- 0- 0.
9. Pleader's fee on Rs 137/-.	5- 0- 0 (as certified)		
10. Process writing fees	0- 4- 0.		
Total.	Rs 25- 7-0	Total. ..	Rs 10-12- 0.

Given under my hand and the seal of the Court this fourth day of August 1942.

Errors etc. four only.

Sd/ D.K. Venkatesha Iyer.
Dt.Munsiff.

(N.B.) The parties should apply as soon as possible for the return of all the exhibits which they may wish to preserve as the records will be liable to be destroyed after three years or after six years from this date according to the nature of the exhibit under the rules for the destruction of records.

/True copy/

6.12.42

For Collector.

4.12.42

Full ~~Record.~~ 2781M/EXC. Single number

	I.A.	A.D.S. & L.R.	Asst. Secretary. L.R.	Sett.	Sep Rev.	C.W.	Jt. Secy.	Secy.	M-4	M-3	M-2	M-1
1 Open file seen by			✓								✓	
2. Final draft seen by.			✓									
3. Now circulated to			✓									
4. Initials.												

Passed for record.

~~Secretary.~~
Joint Secretary.

~~A.S. (C.W.)~~

A.S. (L.R.) 3/3/81 A.S.

~~A.S. (Sett.)~~ 3 14/10

A.S. (Excise)

A.D.S. & L.R.

I-~~C.~~

Note:- Entries not required to be scored ou